

SEP-12-2000 14:55

482954



REIMBURSEMENT AGREEMENT

9/12/00

LIBBY ASBESTOS SITE

Lincoln County, Montana

THIS AGREEMENT is made and entered into this ____ day of _____, 2000, by and between Mel and Lirah Parker ("Owner") and the United States Environmental Protection Agency ("EPA").

WHEREAS, the Owner is located at the Libby Asbestos Site in Lincoln County, Montana; EPA is a Federal Agency under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., and the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq.; and the National Contingency Plan ("NCP") 40 C.F.R. Part 300; and

WHEREAS, the Owner is the owner of the land and improvements (the "Property") within the Screening Plant, a former vermiculite processing facility located within the Site; and

* WHEREAS, the Owner operates on the Property the Raintree Nursery Business of the Property; and

WHEREAS, the Action Memorandum dated May 23, 2000 documented EPA's determination that cleanup is necessary at the Screening Plant because of asbestos contamination, thus requiring the temporary relocation of the Owner's home and business; and

WHEREAS, the selected response action being implemented at the Property has required the demolition of the Owner's home and buildings related to the nursery business, and the disposal of contaminated personal items, business inventory and other business related items which were either not susceptible to cleaning or were more expensive to clean than to replace; and

WHEREAS, the Owner certifies that the Property was purchased with no knowledge of the asbestos contamination; and

* WHEREAS, the Owner has decided to terminate business operations and to rebuild only a home on the Property; and

WHEREAS, the Owner has granted access to the Property to EPA, its employees, agents, contractors and representatives for purposes of implementing the selected response action for the Screening Plant, including the demolition and disposal of contaminated buildings, equipment and inventory; and

WHEREAS, EPA has been providing funds to the Owner for temporary relocation assistance so that the Owner may maintain a different residence during the implementation of the selected response action at the Screening Plant;

Poor Quality Source Document

**The following document images
have been scanned from the best
available source copy.**

**To view the actual hard copy, contact the
Superfund Records Center at 303-312-6473**

SEP-12-2000 14:56

NOW, THEREFORE, in consideration of the mutual promises, obligations, and agreements set forth below, the parties agree as follows:

I. Obligations of EPA.

A. Subject to availability of funds, EPA shall pay the Owner the sum of _____ DOLLARS (\$) within _____ days of execution of this Agreement, which represents the replacement value of the building demolished or to be demolished on the property. These buildings include the Parker residence-office, the long shed, and the west shed. The replacement value has been determined by an independent appraiser.

EPA shall issue a "Notice of Availability of Property" to the Owner. The notice shall state the reason for the response action. The notice shall also state the location of the replacement dwelling on the date of issuance of the notice.

C. Subject to availability of funds, EPA shall pay to the Owner the sum of _____

within _____ days of execution of this Agreement, which represents the replacement value of personal items, equipment, and inventory disposed of pursuant to implementation of the selected response action. The list of all items for which compensation is being provided pursuant to this paragraph is attached as Exhibit 1 to this Agreement.

D. Subject to availability of funds, EPA shall continue to pay to the Owner funds for temporary relocation assistance in accordance with the schedule set forth in Exhibit 2 to this Agreement until six months after the date of issuance of the Notice of Availability of Property. If EPA issues the Notice between October 1 and March 31, an extra three months shall be added to the temporary relocation assistance period.

E. EPA will assure that the compaction of the soil meets Government issued specifications for construction at the proposed location for the new dwelling. In addition, upon completion of the response action, the replacement of the soil shall be graded at _____ elevation. To the re-graded retention at the site as E.P.H.T.

II. Obligations of the Owner.

A. The Owner hereby provides to EPA, its employees, agents, contractors, and representatives an irrevocable right to enter upon the Property for purposes of implementing the selected response action at the Screening Plant. The Owner further consents to the demolition and disposal of buildings, and disposal of contaminated personal items, business equipment and inventory covered by this Agreement, as well as any other improvements located on the Property that may interfere in the implementation of the response action. No!

B. The Owner agrees to record with the Lincoln County Recorder's Office the deed notice and restrictive covenant for the Property attached as Exhibit 3 within fifteen days after

No!

SEP-12-2000 14:57

P. 04

execution of this Agreement. The Owner agrees to abide by the terms of the restrictive covenant during the pendency of ownership of the Property. *No!*

III. Release of Claims.

The Owner hereby agrees that payment by EPA of the monetary amounts set forth herein represents full settlement and just compensation, under all applicable laws and regulations, of any *No!* and all claims the Owner may have against EPA arising from, or relating to, implementation of the response action on the Property, including, but not limited to, the demolition and disposal of *No!* structures located on the Property and the disposal of contaminated personal items, business equipment and inventory.

IV. Waiver of Right to Sue

Nothing in this Agreement shall preclude the Owner from pursuing any legal remedy that it may otherwise have against any potential responsible party in order to recover costs EPA incurs for response action on the site. *No!*

V. No Warranty, Guarantee or Fitment

The Owner acknowledges and agrees that EPA's participation in this Agreement does not provide any warranty, guarantee or assurance that there are no construction defects or other deficiencies in buildings, fixtures or equipment structures placed on the Property using funds provided by this Agreement. EPA shall not be responsible for any structural, mechanical, legal or other problems discovered during or after the construction. *No!*

VI. Notices.

A. Any notice or communication required or permitted under this Agreement shall be deemed to have been given if in writing and either delivered personally or mailed by first class, registered, or certified mail, as follows:

If to the Owner:

Mel and Lirah Parker

If to EPA:

Paul Peronard, EPR-ER
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202

SEP-12-2000 14:58

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner prescribed above.

VII. Modification.

This Agreement may be amended, modified or terminated only by written instrument or written instruments signed by the parties hereto. No oral comment nor act or course of dealing shall be construed to constitute an amendment, modification or termination hereof.

VIII. Parties Bound

This Agreement shall bind upon EPA and its successors and upon the owner and its heirs, successors and assigns.

Obligation of Future Appropriations

Nothing in this Agreement shall constitute, nor be deemed to constitute, an obligation of future appropriations of the Congress of the United States of America.

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall become effective upon the date on which EPA executes the Agreement.

Owner

U.S. Environmental Protection Agency

Mel Parker

Max Rodas
Assistant Regional Administrator
Office of Ecosystem Protection
and Remediation

Lrah Parker

Date: _____

Date: _____

COMMENTS ON THE E. P. A. REIMBURSEMENT AGREEMENT

Page 1 - WHEREAS (#7) the Owner has decided to terminate business operations and to rebuild only a home on the property.

Question: Is this relevant to the Agreement?

Could we not start a business at a later point in time?

Page 2 - I - Obligations of E.P.A.

A. "Subject to availability of funds."

Question: Just how binding is a statement like that?

A² "These buildings include the Parker residence - office, the long shed and the west shed."

Question: What about the greenhouses, storage tanks, manufactured home, solarium, extraction room, break room, tunnels, fruit stand, Reishi room, laboratory?

C "... which represents the replacement value of all personal items, equipment and inventory disposed of pursuant to implementation of the selected response action."

Question: The verbal understanding related to us was that neither the "inventory" nor the "real property" was to be "disposed" of until this agreement was signed and in place.

D "... until six months after the date of issuance of the Notice of Availability of Property."

Question: The property will be given back to us in stages depending on when contaminated material is hauled away. I would assume that "Notice of Availability of Property" is when all stages of "the Selected Response Action" are completed.

Page 2 - II Obligations of the Owner

A. "... the Owner further consents to the demolition and disposal of buildings, and disposal of contaminated personal items, business equipment and inventory covered by this agreement. . ."

Question: Should it not read: Upon the signature of this agreement between the E.P.A. and the Parker's then (the owner further. . .)

COMMENTS ON THE E. P. A. REIMBURSEMENT AGREEMENT

Page 2 - II Obligations of the Owner continued. . .

A² "... as well as any other improvements located on the property that may interfere in the implementation of the response actions."

Question: We once again have a verbal agreement with the E.P.A. that any infrastructure not included in the reimbursement for "inventory" and "real property," such as underground electrical and water lines, power base meters, etc., will be replaced at no cost to ourselves.

B "... and restrictive covenant for the Property. . . "

Question: What "restrictive covenant are we looking at here?"

Page 3

B² "... the Owner agrees to abide by the terms of the restrictive covenant during the pendency of ownership of the Property."

Question: E.P.A. has indicated that they will clean up all vermiculite-asbestos material that can be attributed to W.R. Grace operations on Property. Any natural deposits from high run-off, etc., will not be removed. This we can relate to!!

III - Release of Claims

"... arising from, or relating to, implementation of the response action on Property. . ."

Question: When the E.P.A. has completed the response action we would like to have some written reassurance that the "fence" is relocated, the property has all previous infrastructure in place and operating properly, the proposed road relocation is in place, and what degree of assistance to replant trees to help compensate for loss of commercial timber trees removed on north end of property.

IV - Reservation of Rights

"... any responsible party in order to recover costs E.P.A incurs for response actions at the Site."

Question: How does this apply to us?

COMMENTS ON THE E. P. A. REIMBURSEMENT AGREEMENT

V - No Warranty of Habitability or Fitness

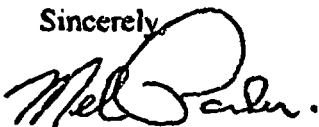
"... E.P.A. shall not be responsible for any structural, mechanical, legal or other problems discovered during or after construction."

Question: Will the E.P.A. repair damage done during restoration through replacement of such things as infrastructure or broken water lines which may cause erosion and silt deposition into river, etc.? There has to be some degree of responsibility, even if a time frame, the constraint.

September 18, 2000

These are questions for which I am concerned about and hopefully you can relate and identify others that I have overlooked.

Sincerely,



Mel Parker

NOTE: III RELEASE OF CLAIMS. (PAGE-3).

--- AND ALL CLAIMS THE OWNER MAY HAVE AGAINST THE E.P.A.

QUESTION:

ARE WE SIGNING AWAY OUR RIGHT FOR INDEMNIFICATION AT A LATER DATE?